MISSOURI COURT OF APPEALS WESTERN DISTRICT

JENNIFER J. JONES,

Appellant,

v.

WELLS FARGO AUTO FINANCE, LLC and AMY LAFFOON,

Respondents.

DOCKET NUMBER WD74558

Date: November 13, 2012

Appeal from:

Clay County Circuit Court

The Honorable Anthony R. Gabbert, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, PJ., Alok Ahuja and Mark D. Pfeiffer, JJ.

Attorneys:

Mark A. Buchanan, Kansas City, MO, for appellant.

Mikah K. Thompson, Donald S. Prophete, Robert L. Ortbals, Jr., Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY COURT OF APPEALS -- WESTERN DISTRICT

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WD74558 Clay County

On May 25, 2010, Jones filed this lawsuit against Wells Fargo Auto Finance, LLC and her supervisor Amy Laffoon, alleging racial discrimination, harassment, and retaliation in employment in violation of the Missouri Human Rights Act ("MHRA"). At the time of filing suit, Jones was employed as loan collector with Wells Fargo.

In early 2011, Wells Fargo decided to discontinue the operations in which Jones was employed, necessitating a large-scale reduction in force. In connection with her layoff, Jones – along with 190 other similarly-situated employees – was presented with a contract entitled "Agreement and Release of Claims." The Agreement provided for the payment of salary continuation or severance pay to Jones following her layoff. The Agreement also contained a release provision, which released Wells Fargo from any claims arising "as a result of your employment with or separation from employment." Jones executed the Agreement in February 2011.

Several months later, Wells Fargo's counsel in the MHRA suit filed a motion to enforce the release provision of the Agreement, arguing that it barred Jones from continuing to litigate her MHRA claims. Jones opposed the motion, and attached an affidavit in which she testified that a Wells Fargo representative had told her during a conference call that the Agreement would only prevent her from asserting claims against Wells Fargo in connection with her layoff.

Both Wells Fargo and Jones requested that the trial court conduct an evidentiary hearing on Wells Fargo's motion to enforce the Agreement.

Despite the parties' joint request for an evidentiary hearing, the trial court issued an order granting Wells Fargo's motion without conducting a hearing, and without hearing oral argument. Jones appeals.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Division Two holds:

In *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596 (Mo. banc 2007), the Missouri Supreme Court explained that a motion to enforce settlement agreement can be enforced in one of three ways: (1) following an evidentiary hearing to resolved disputed factual issues; (2) as a motion for judgment on the pleadings; or (3) using a procedure akin to a summary judgment motion. *Id.* at 599. *Eaton* emphasized that "[b]y far the most desirable approach would be to hold an evidentiary hearing where the moving party proves the agreement and the non-moving party can then present evidence as to any defenses." *Id.*

Under *Eaton*, and our more recent decision in *Paragon Lawns, Inc. v. Barefoot, Inc.*, 304 S.W.3d 298 (Mo. App. W.D. 2010), the trial court's judgment must be reversed. The trial court gave Jones no notice that it intended to rule Wells Fargo's motion for enforcement of settlement agreement based solely on the motion papers, and both Wells Fargo and Jones had requested an evidentiary hearing. In these circumstances, Jones was denied a meaningful opportunity to argue that genuine issues of material fact prevented a summary disposition of Wells Fargo's motion. Moreover, in her opposition to Wells Fargo's motion, Jones identified at least one genuinely disputed factual issue: whether a Wells Fargo representative had told her that the Agreement, and its release provision, related solely to layoff-related claims. Jones' belief that the Agreement was limited to layoff-related claims is bolstered by the fact that it appears that litigation counsel for Wells Fargo and Jones were not involved in the process leading to the execution of the Agreement, and may not have been aware of the Agreement, or of its potential significant to this lawsuit, until several months later. In these circumstances, the trial court's *sua sponte* decision to rule the motion based solely on the motion papers was erroneous, and must be reversed.

Before: Division Two: Joseph M. Ellis, PJ., Alok Ahuja and Mark D. Pfeiffer, JJ.

Opinion by: Alok Ahuja, Judge

November 13, 2012

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